



REPUBLIC OF KENYA



KENYA LAW
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**Onyango v Lawi (Civil Appeal E019 of 2023)
[2025] KEHC 5478 (KLR) (29 April 2025) (Judgment)**

Neutral citation: [2025] KEHC 5478 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VIHIGA
CIVIL APPEAL E019 OF 2023**

**JN KAMAU, J
APRIL 29, 2025**

BETWEEN

CHRISTOPHER OORO ONYANGO APPELLANT

AND

RESI AWINJA LAWI RESPONDENT

*(Being an appeal from the Judgment and Decree of Hon S. Ongeri (SPM) delivered at Vihiga
in the Senior Principal Magistrate's Court Civil Case No 92 of 2018 on 20th June 2023)*

JUDGMENT

Introduction

1. In his decision of 20th June 2023, the Learned Trial Magistrate, Hon S. Ongeri, Senior Principal Magistrate, found the Appellant to have wholly liable for the injuries that the Respondent suffered and entered Judgment against the Appellant in favour of the Respondent herein in the following terms:-
General damages Kshs 1,700,000/=
Costs of the suit and interest.
2. Being aggrieved by the said decision, on 20th July 2023, the Appellant herein filed a Memorandum of Appeal dated 10th July 2023. He relied on five (5) grounds of appeal.
3. His Written Submissions were dated 15th July 2024 and filed on 24th September 2024. On 6th November 2024 when the matter came up for mention for directions, the Respondent indicated that she would not be filing any written submissions. The Judgment herein is therefore based on the Appellant's Written Submissions only.



Legal Analysis

4. It is settled law that the duty of a first appellate court is to evaluate afresh the evidence adduced before the trial court in order to arrive at its own independent conclusion but bearing in mind that it neither saw nor heard the witnesses testify.
5. This was aptly stated in the case of *Selle & Another v Associated Motor Boat Co Ltd & Others* [1968] EA 123 where the court therein held that the appellate court was not bound by the findings of fact of the trial court but that in re-considering and re-evaluating the evidence so as to draw its own conclusions, it always had to bear in mind that it neither saw nor heard the witnesses and thus make due allowance in that respect.
6. Having looked at the Grounds of Appeal and the Appellant's Written Submissions, it appeared to this court that all the Grounds of Appeal were related and the issue that had been placed before this court for determination was whether or not the quantum that was awarded by the Trial Court was excessive in the circumstances warranting interference by this court.
7. The Appellant submitted that this being a first appeal, the court was duty bound pursuant to Section 78 of the *Civil Procedure Act*, Cap 21 (Laws of Kenya), to re-assess and re-evaluate the evidence adduced before the trial court and arrive at its own independent conclusion bearing in mind it neither saw nor heard the witnesses testify in the first instance as was also held in the case of *Kenya Ports Authority v Kushton (K) Ltd* [2009] 2 EA, 212.
8. He urged this court to set aside the entire finding of the Trial Court. He pointed out that a re-evaluation of the quantum herein was prudent as the Respondent only testified of a single fracture of the leg (tibia). He submitted that when she was cross-examined, she admitted no x-ray was produced to confirm the dislocation of her ankle joint.
9. He contended that it was trite law that assessment of quantum of damages in a claim for general damages was a discretionary exercise but that the discretion had to be exercised judicially with wise circumspect and upon some legal principles. He added that the said discretion in assessing the amount of general damages payable would be disturbed if the trial court took into account an irrelevant factor or left out of account a relevant factor or that the amount was so inordinately low or high that it must be wholly erroneous estimate of the damages.
10. He further submitted that it was also trite law that awards for damages had to be within consistent limits taking into account comparable injuries and awards. In that regard, he relied on the case of *Denshire Muteti Wambua v Kenya Power & Lighting Co Ltd* [2013] eKLR as quoted in *Michael Okello v Priscilla Atieno*[2021]eKLR where it was held that the general method of approach for assessing damages was that comparable injuries should as far as possible be compensated by comparable awards keeping in mind the correct level of awards in similar cases.
11. He also cited the case of *Kigaraari v Ava* [1982-88] 1 KAR 768 as quoted by this court in the case of *Godfrey Wamalwa Wamba & Another v Kyalo Wambua*[2018]eKLR where it was held that damages had to be within limits set out by decided cases and also inevitably passed on to members of the public, the vast majority of whom cannot within the limits of the Kenyan economy can afford (sic).
12. He urged this court to disturb the award of Kshs 1,700,000/= general damages for being inordinately excessive. To buttress his point, he placed reliance on the case of *Kerandi & Another v Okong'o* Civil Appeal No E028 of 2023[2024] KEHC 3823 (KLR) where the respondent had sustained fractures of ribs, tibia and fibula and dislocation of wrist and the high court awarded Kshs 450,000/= general damages and the case of *Kiama v Mutiso (Civil Appeal 40 of 2023)*[2024] KEHC 5135) where an



- award of Kshs 700,000/= general damages was set aside and substituted with general damages in the sum of Kshs 400,000/=. He argued that the injuries in the above cited cases were more grievous than the ones herein. He therefore proposed a maximum award of Kshs 350,000/= general damages.
13. He invoked Section 27(1) of the *Civil Procedure Act* and urged this court to allow his appeal, set aside the Trial Court's Judgment and award him the costs of this appeal as it was trite law that costs followed the events.
 14. It is well settled in law that an appellate court will not disturb an award of general damages unless the same was so manifestly high or inordinately excessive or manifestly or inordinately low that a trial court had proceeded on the wrong principles or misapprehended the law, a principle that was dealt with in the case of *Margaret T. Nyaga v Victoria Wambua Kioko* [2004] eKLR.
 15. It had to be understood that money could never really compensate a person who had sustained any injuries. No amount of money could remove the pain that a person went through no matter how small an injury appeared to be. It would in fact be difficult to say with certainty that a particular amount of money would be commensurate with the injuries that a person had sustained. It was merely an assessment of what a court would find to be reasonable in the circumstances to assuage a person who had suffered an injury.
 16. However, this assessment was not without limits. A court had to ascertain to itself the sum of general damages that courts and especially appellate courts would ordinarily award in respect of a particular injury. A court therefore had to be guided by precedents.
 17. Indeed, in the case of *Kigaraari v Aya*(Supra), it was stated that damages had to be within the limits set out by decided cases and also within the limits the Kenyan economy could afford. This was because high awards would lead to higher insurance premiums which would in turn affect the members of the public.
 18. This court also had due regard to the case of *Lim v Camden HA* [1980] AC 174 where it was held that even in assessing compensatory damages, the law sought to indemnify the victim for the loss suffered and not to punish the tortfeasor for the injury that he had caused.
 19. Similar injuries ought to attract comparable awards. However, in the quest for consistency, courts also had to recognise that no case was exactly the same as the other. It had to be noted that cases could not contain exact injuries. They were merely for comparison purposes. Each case therefore had to be decided according to its own peculiar circumstances but keeping in mind that any monies awarded had to be sustainable.
 20. Towards this end, an appellate court ought not to interfere with the discretion of a trial court merely because it could have awarded a lower or higher sum than that which was awarded by the trial court. It could only interfere where the award of general damages was so manifestly high or inordinately excessive or manifestly or inordinately low that a trial court had proceeded on the wrong principles or misapprehended as was held in the case of *Margaret T. Nyaga v Victoria Wambua Kioko* (Supra).
 21. In her Complaint dated 3rd October 2018 and filed on 4th October 2018, the Respondent pleaded that she suffered tenderness and swollen head, laceration on the head and right arm, skull, back and chest injury, fracture of the right fibula ankle joint and dislocation of the ankle joint following an accident. She testified that she was injured on her right leg with a fracture on the head (sic) and that she was treated at Jaramogi Oginga Odinga Teaching and Referral Hospital (JOOTRH) at Kisumu. She produced the P3 form and the Discharge Summary, indicating that she was admitted for ten (10) days. The said Discharge Summary indicated that the x-ray was done showed that she had sustained a tibia fibula fracture with ankle dislocation.



22. The Medical Report of Dr L. W. Okombo dated 6th June 2019 set out the Respondent's injuries as blunt chest and neck injuries, fracture of the right/fibula, tenderness around the ankle joint and dislocation of the ankle joint. At the time of the medical examination, the Respondent had not fully recovered and was still complaining of pains on the right lower limb and the right ankle joint which was as a result of the soft and bone tissue injuries. He opined that she needed specialised attention of an orthopaedic surgeon for further treatment of her lower limb. He termed her injuries as having been "grievous harm."
23. Remaining faithful to the doctrine of stare decisis and taking the inflationary trends into consideration, it was the considered view of this court that general damages in the sum of Kshs 1,700,000/= that was awarded by the Trial Court to have been inordinately high or manifestly excessive to warrant interference of this court. However, bearing in mind the injuries that the Respondent sustained, this court found and held that the award of Kshs 350,000/= general damages that the Appellant had proposed was too low to compensate her.
24. Taking into account the injuries that the Respondent sustained herein vis a vis the damages in comparable cases and the inflationary trends, this court came to the firm conclusion that an award of Kshs 800,000/= general damages would be sufficient to compensate the Respondent for the injuries that she sustained as she required further treatment by an orthopaedic surgeon. Indeed, Dr Dr L. W. Okombo had termed the said injuries as "grievous harm."
25. In arriving at the said conclusion, this court had due regard to the following cases:-
 1. Akamba Public Road Services v Abdikadir Adan Galgalo [2016] eKLR
This very court awarded general damages in the sum of Kshs 500,000/= where the respondent therein had sustained a fracture of the right tibia leg malleolus and right fibular bone, with a blunt injury to the ankles.
 2. Mohammed Younis Quereshi & Another v Chris Maina Mathu [2020] eKLR
The respondent therein sustained bruises on the head, on both hands, and left leg and a fracture of the left tibia. The injuries would heal but leave him with disability at 20%. The appellate court reduced the general damages from Kshs 800,000/= to Kshs 400,000/= general damages.
26. In the premises foregoing, Grounds of Appeal Nos (1), (2), (3), (4) and (5) of the Memorandum of Appeal were merited and the same be and are hereby allowed.

Disposition

27. For the foregoing reasons, the upshot of this court's decision was that the Appellant's Appeal that was dated 10th July 2023 and filed on 20th July 2023 was merited. The effect of this decision is that the Judgment of Kshs 1,700,000/= that was entered by the Trial Court in Vihiga in SPMCC No 92 of 2018 on 20th June 2023 be and is hereby set aside and/or vacated and the same be and is hereby replaced with a decision that Judgment that be and is hereby entered in favour of the Respondent herein wholly against the Appellant for the sum of Kshs 800,000/= made up as follows:-
General damages Kshs 800,000/=
Plus costs and interest at court rates.
28. For the avoidance of doubt, interest on general damages will accrue at court rates from the date of judgment of the Trial Court until payment in full. As the Respondent had suffered a reduction of the



general damages, to mitigate further losses, this court hereby directs that each party will bear its own costs of this Appeal.

29. It is so ordered.

DATED AND DELIVERED AT VIHIGA THIS 29TH DAY OF APRIL 2025

J. KAMAU

JUDGE

